

REMARKS

Upon entry of the present amendment, claims 1, 4, 6-10, and 14-19 will be pending in the present application. Applicants have cancelled claims 3, 5, and 11, and amended claims 4, 14, 15, and 18. Claims 4 and 14 have been amended to delete a reference to the E4 gene. Claim 15 has been amended to depend from claim 1. Claim 18 has been amended to independent form, to improve clarity. Support for these amendments can be found throughout the application as filed, e.g., at page 10, lines 23-27, and page 17, lines 16-25, *inter alia*.

Applicants have also amended the specification to insert a paragraph regarding the priority claim of the present application.

No new matter has been added.

In a preliminary amendment filed on September 23, 2004, Applicants deleted pages 24b, 24c, 24d, 25, and 26, as well as Figures 7-9. **Applicants request that the Examiner kindly confirm that these pages and figures have been deleted.**

Interview of August 22, 2007

Applicants and their undersigned representative wish to thank Examiner Priebe for the courtesy of the telephone conversation of August 22, 2007, in which the Advisory Action mailed August 14, 2007, was discussed. Applicants note that the Reply submitted on August 3, 2007, was not entered because of an error in antecedent basis identified by the Examiner. Applicants have amended claims 14 and 15 to rectify this error. Specifically, claim 14 has been amended to delete the reference to the E4 gene, and is now in agreement with claim 4, from which it depends. Claim 15 has been amended to depend from claim 1, and specifies that the adenovirus has an additional mutation in one or more genes of the group E1a, E1b, and E4, wherein said mutation is an insertion of a promoter that is selectively active in tumor cells (see, e.g., page 17, lines 16-25, of the application as filed).

Applicants believe that the claims as amended herein do not raise any additional issues, and request entry of the present amendment in lieu of the amendment previously submitted on August 3, 2007.

Objections to the Specification

At page 2 of the Office Action mailed June 7, 2007 (the "Office Action"), the specification was objected to under 35 U.S.C. 132(a) because the amendment filed during examination of the PCT application, PCT/ES03/00140, allegedly introduced new matter into the disclosure. Applicants have amended the specification to delete this paragraph. In addition, as noted above, Applicants had previously deleted pages 24b-d, 25, and 26 of the application as filed, and Figures and request confirmation of the deletion thereof. In light of these amendments, Applicants request withdrawal of the objection to the specification.

Objections to the Claims

Claim 14 was objected to under 37 CFR 1.75 as allegedly being a substantial duplicate of claim 5. Applicants have cancelled claim 5, and request withdrawal of the objection to claim 14 and allowance thereof.

Claims 12 and 14 were objected to as informal because Claims 12 and 14 depend from dependent claims but are separated therefrom by dependent claims that do not depend from the same dependent claims. The Examiner noted at page 3 of the Office Action that this could be remedied by an Examiner's amendment; Applicants request that the Examiner kindly do so.

Rejections under 35 U.S.C. § 112, First Paragraph

Claims 3 and 11 remained rejected as allegedly lacking written description. Applicants have cancelled claims 3 and 11 without prejudice and submit that this renders moot the rejection thereof.

Claim 4 remained rejected for allegedly lacking enabling support. The Examiner noted at page 5 of the Office Action that the specification was enabling

... for treating "cancer" resulting from human tumor cells by administering an adenovirus that selectively replicates in the human cancer cells, wherein the adenovirus is descendent from a human adenovirus having a VAI gene and a VAII gene by mutation of the VAI and VAII genes such that the genes are inactivated and the human tumor cells have a constitutively active Ras pathway or are unresponsive to exposure to interferons, and wherein the adenovirus may additionally have mutations in EI a or EI b genes that result in further selective replication in tumor cells ...

While Applicants do not concede that the specification lacks enablement for the full scope of claim 4, Applicants have amended claim 4 to recite a virus that has additional mutations in one or both of E1a or E1b, and submit that, as the Examiner has noted, the claim is enabled and request withdrawal of the rejection thereof under 35 U.S.C. § 112, first paragraph.

Rejections under 35 U.S.C. § 112, Second Paragraph

Claim 18 was rejected at page 6 of the Office Action as allegedly indefinite. Applicants have amended claim 18 to independent form and submit that the claim is now internally consistent, clear, and definite, and therefore request withdrawal of the rejection under 35 U.S.C. § 112, second paragraph.

Conclusion

Applicants note that the Examiner indicated that claims 1, 5-10, 13, 15-17 and 19 were allowed. In light of the arguments and amendments presented herein, Applicants submit that all of the pending claims are allowable, and request immediate notification thereof. If the Examiner feels that it would further prosecution of the present application, he is invited to telephone the undersigned at (617) 956-5985.

No fees are believed to be due. Please apply any charges or credits to deposit account 06-1050, referencing Attorney Docket No. 16596-049US1.

Respectfully submitted,

Date: Aug 23, 2007

Janice Kugler DeYoung
Reg. No. 50,429

Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110
Telephone: (617) 542-5070
Facsimile: (617) 542-8906